

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

August 6, 1999

UNITED MINE WORKERS OF AMERICA :  
on behalf of WILLIAM KEITH BURGESS, :  
GLENN LOGGINS, DAVID McATEER, :  
B. RAY PATE AND OTHERS :  
:  
v. : Docket Nos. SE 96-367-D  
: SE 97-18-D  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), :  
MICHAEL J. LAWLESS, FRANK YOUNG, :  
TOM MEREDITH, and JUDY McCORMICK :

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

## ORDER

### BY THE COMMISSION:

In this discrimination proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) ("Mine Act" or "Act"), complaints were brought by the United Mine Workers of America on behalf of several miners, alleging that the Department of Labor's Mine Safety and Health Administration ("MSHA") and four of its employees had discriminated against the miners in violation of section 105(c) of the Mine Act, 30 U.S.C. § 815(c). Administrative Law Judge Jacqueline Bulluck initially determined that neither MSHA nor its employees are subject to proceedings filed pursuant to the section 105(c). 19 FMSHRC 294 (Feb. 1997). On review of that decision, the Commission affirmed the judge's holding that MSHA is immune from such suits, and her dismissal of the complaints against MSHA, but vacated the dismissal of the suits against the four MSHA employees on the ground that MSHA employees are not totally immune to suit for Mine Act violations. 20 FMSHRC 691 (July 1998).

Subsequently, the MSHA employees filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit. The court, holding that MSHA officials acting under color of their authority are not amenable to suit under section 105(c) of the Mine Act, granted the petition for review, vacated the Commission's decision, and remanded for the Commission to dismiss the complaints against the MSHA employees. *Meredith v. FMSHRC*,

177 F.3d 1042 (D.C. Cir. 1999). On July 27, 1999, the court issued its mandate in this matter, returning the case to the Commission's jurisdiction. Pursuant to the court's order, we dismiss the complaints against the MSHA employees.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner

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Theodore F. Verheggen, Commissioner

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Robert H. Beatty, Jr., Commissioner

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